

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

ALFONSO R. LARA

Petitioner.

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CHARGE NO.: 2009CF0688
EEOC NO.: 21BA83076
ALS NO.: 10-0134

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Alfonso R. Lara's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge 2009CF0688; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **THEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE:

In support of which determination the Commission states the following:

1. The Petitioner filed a charge of discrimination with the Respondent on September 10, 2008, in which he alleged the Safer Foundation ("Employer") failed to promote him because of his ancestry, Hispanic (Count A), and sex, male (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On January 21, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On February 22, 2010, the Petitioner filed this timely Request.
2. On February 20, 2007, the Employer hired the Petitioner as a Correctional Counselor I ("CRC I"). The Employer's general Position Description for all CRCs indicated that all CRCs could be given additional assignments and responsibilities. Upon completion of any additional assigned temporary duties, CRCs would resume their normal responsibilities.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. In September 2008, the Petitioner expressed an interest in performing the duties of a Case Aide. The Petitioner was not assigned any Case Aide duties.
4. In the course of its investigation, the Respondent determined the Employer does not have a Case Aide position. Rather the “Case Aide” designation reflects an assignment of additional temporary duties. Employees who were assigned “Case Aide” duties did not receive pay raises, additional benefits, or any change in title.
5. The Employer presented evidence that a female, non-Hispanic employee who had been temporarily assigned additional duties had not received a pay increase during the time she performed the additional duties.
6. In his charge, the Petitioner alleged that in September 2008, he was denied a promotion to the Case Aide position because of his ancestry and sex. In his Request, the Petitioner states he wants to present additional evidence and he wants to mediate his charge with the Employer.
7. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner’s charge for lack of substantial evidence.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner’s charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent’s investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

As to both Counts A and B, the Commission concludes the evidence is insufficient to establish a *prima facie* case of discrimination because there is no substantial evidence that the Petitioner suffered an adverse action. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). In particular, there is no evidence the Petitioner was ever denied a promotion. There is no evidence that the Case Aide “position” was anything more than a temporary assignment of additional duties.

Accordingly, it is the Commission’s decision that the Petitioner has not presented any evidence to show the Respondent’s dismissal of his charge was not in accordance with the Act. The Petitioner’s Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Safer Foundation, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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Entered this 13th day of October 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box